IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 534 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R.P.SHARMA

Versus

HOTEL SABAR (PVT) LTD & 5

Appearance:

MR RP BHATT for Petitioner

MR KP RAWAL, APP for Respondent No. 6

MR AJ PATEL for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 25/08/2000

ORAL JUDGEMENT

The petitioner who was Assistant Commissioner of Income Tax at the relevant time had filed a complaint against Respondent Nos. 2 to 5 in the Court of Chief

Metropolitan Magistrate, Ahmedabad alleging that they had committed offence under Section 276DD of the Income Tax Act. The learned Additional Chief Metropolitan Magistrate convicted them on a plea of guilty and sentenced Respondent Nos. 2 to 5 till rising of the court and the respondent Nos.1 to 5 to pay the fine of Rs.50/- and to suffer simple imprisonment for 5 days in default.

2. The petitioner has filed this Criminal Revision Application contending that the sentence of Rs.50/- only was inadequate in view of the fact that the Section in question provided a penalty equal to the amount of deposit. Rule was issued on 13.12.1994 and the petition was ordered to be heard with Criminal Revision Applications No.595 of 1991 to 605 of 1991 in which identical questions of facts and law were raised.

3. The said Criminal Revision Applications No. 595 of 1991 to 605 of 1991 came to be decided by this court (Coram: K.J. Vaidya, J.) on December, 1994. The Revision Applications were allowed and the final order was passed as follows:-

"In all these cases, since the amount of deposit in question was accepted long back in the year 1985-86, and accordingly in case for whatever reason the firm does not exist and is defunct, in such an eventuality, the partners or the proprietors will be jointly and severally liable to pay the fine and in default to undergo simple imprisonment for 15 days. Accordingly, before depositing the fine as ordered, the respondents in each one of these cases; shall (i) furnish a statement of the alleged actual amount of deposit or loans; as the case may be (ii) names and addresses of the concerned partners and their liability to pay the same; and (iii) their share of contribution to the total amount. A copy of this statement shall be furnished to the complainant for verification and thereafter after hearing the complainant the same shall be accepted by the court. In the result, all these criminal revision applications are partly allowed. The impugned orders imposing sentence of fine on the partners of the firm are hereby ordered to be quashed and set aside. So far as the accused firms are concerned, they are directed to pay the fine equal to the amount of loan or deposit in question on or before March 31, 1995. The amount of fine to be deposited by

each of the accused firms as stated in detail in the respective complaints."

4. There is no doubt that if the present Revision Application had been listed for hearing alongwith the said Revision Applications, it would have been disposed of in the same terms. Shri A.J. Patel, learned counsel for the respondents no.1 to 5 states that the respondents do not press the contention of plea bargaining and they have no objection if the present Revision Application is disposed of by passing the same order as in the Revision Applications No.595 to 605 of 1991. Hence, this Revision Application is disposed of in terms of the following order:

Since the amount of deposit in question was accepted long back and accordingly in case for whatever reason the company does not exist and is defunct, in such an eventuality, the directors will be jointly and severally liable to pay the fine and in default to undergo simple imprisonment for 15 days. Accordingly, before depositing the fine as ordered, the respondents shall (i) furnish a statement of the alleged actual amount of deposit or loans; as the case may be (ii) names and addresses of the concerned directors and their liability to pay the same; and (iii) their share of contribution to the total amount. A copy of this statement shall be furnished to the complainant for verification and thereafter after hearing the complainant the same shall be accepted by the court. In the result this criminal revision application is partly allowed. The impugned order imposing sentence of fine on the directors (accused no.2 to 5) of the firm is hereby ordered to be quashed and set aside. So far as the company (accused no.1) is concerned, it is directed to pay the fine equal to the amount of loan or deposit in question within two months from today. The amount of fine to be deposited by the accused company is stated in detail in the complaint. Rule is made absolute accordingly.

hki